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Supreme Court, U.S.
FILED

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Supreme Court of the United States OFFICE OF THE CLERK

No_____

DEBRA L. THOMAS PETITIONER

V.

EVANSVILLE VANDERBURGH

SCHOOL CORPORATION, PAT LOGE,

Et al., RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI OF THE UNITED STATES COURT OF THE APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT CERTIORARI

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QUESTIONS FOR REVIEW

1. Whether Court of Appeals overlooked District Court Order on October 13, 2004, that deprived Petitioner of her right for a hearing. Magistrate Judge set a Telephonic Status Conference for Wednesday to determine whether the Plaintiff claim survive this stage. Did District deprive Petitioner of her Federal right under Federal Rules of Civil Procedure Rule 12, 56, 28 U.S.C.

2. If, so, Petitioner was deprived of her right to present contradicting affidavits and material to cure jurisdictional defect and opportunity to cure defect in Petitioner's complaint.

3. Whether Court of Appeals overlooked District Court error for violating the Federal Rules of Civil Procedure Rule 56, and Local Rules 78 and 83, for denying Petitioner of her motion requesting for Oral Argument.

4. If, so, Did Court of Appeals of the Seventh Circuit overlook in opinion case Dredge Corp. v. Penny 338 F2d 456, 1 ALR Fed 281, states revelant in part, that District Court cannot by rule or otherwise, preclude a party from requesting Oral Argument, nor deny such when Made by party opposing a motion for summary judgment. Also see: Fernhoff v. Tahoe Regional Planning Agency (1986, CA9 Nev) 803 F2d 979.

5. Whether Court of Appeals overlooked District Court error of law for depriving Petitioner of her right of

notice and opportunity of the Court's intentions on ruling on summary judgment. Did Court of Appeals overlook District Court Order on November 04, 2004, that Dismiss Petitioner's complaint and granted the Respondents' their motion for summary judgment under Federal Rules of Civil Procedure Rule 56 (e) not for a frivolous complaint.

6. If, so, The Federal Rules of Civil Procedure Rule 12 (b), 56, 28 U.S.C.A. states revelant in part, Unless claim is frivolous, court cannot sua sponte enter summary judgment, or dismiss complaint without notifying parties of its intentions and allowing opportunity to cure defect in complaint or to respond. See: English v. Cowell (1993, CA7 Ill) 10 F3d 434, 144 BNA LRRM 2754, 126 CCH LC 10928, 27 FR Serv 3d 513.

7. Whether Court of Appeals overlooked District Court manifest error, for mishandling or disposing of Petitioners supplemental eighteen additional pages of genuine issue of material fact on August 16, 2004, that had met the requirement under 56 (e). Did District Court error for not ruling on Petitioner's supplemental genuine issues of material fact that was filed stamped by the Clerk of the District Court.

8. If, so Did District Court error for not ruling on Petitioner's supplemental eighteen additional pages of genuine issue of material fact filed and filed stamped on August 16, 2004.

9. Whether District Court overlooked Respondents motion on September 24, 2004 for Order on supplemental material filed by Petitioner. Does Respondents motion provide evidence that District Court had knowledge of Petitioner's supplemental eighteen additional pages of genuine issues of material facts.

10. If, so is District Court error grounds for a manifest error under Federal Rules of Civil Procedure Rule 59 (e).

11. Whether Court of Appeals overlooked the error of the District Court for not ruling on Petitioner's supplemental eighteen pages of material evidence under Federal Rules of Civil Procedure Rule 56, that establishes jurisdictional under 28 U.S.C. 1343 (a)(3) that redressed the deprivation of any rights, privileges, or immunity Secured by the Constitution of the United States.

12. Whether Court of Appeals overlooked District Court denying Petitioner her motion to Compel Discovery on August 18, 2004, the Court's order was denied for stay of future proceedings on September 18, 2004. Did District Court deprive Petitioner of her opportunity to present all material evidence under Federal Rules of Civil Procedure Rule 12.

13. Whether Court of Appeals overlooked District Court error under Federal Rules of Civil Procedure Rule 12 (c), and Rule 12 (b), revelant in part, that

motion for judgment within such time as not to delay the trial all parties shall be given reasonable opportunity to present all material Pertinent to such a motion. Did Court of Appeals overlook Petitioner motions denied by the Court to submit Petitioner's genuine issues of materials fact that was denied by the District Court.

14. Whether Court of Appeals overlooked District Court error for not ruling on the Petitioner's supplemental eighteen genuine issues of material fact submitted on August 16, 2004.

15. Whether District Court should have overlooked Petitioner's mislabeled motion for reconsider granting the defendants' their defendants their motion for summary judgment. Petitioner, pro se, mislabeled her motion but was filed within the ten day limit after judgment. Petitioner's counselor had abandoned her case without notifying Petitioner of his intentions.

16. Whether Court of Appeals overlooked Petitioner Appendix that asserted over two hundred pages of evidence bearing burden of proof showing jurisdictional does in fact follow under Federal Rules of Civil Procedure Rule 12, 56, 28 U.S.C.A.

17. Whether Court of Appeals overlooked the Evansville Vanderburgh School Board of Trustees in their official capacities is the final policy making that adopted revelant in part, two policies that deprived

Petitioner of her 1983 Civil Rights and violated Petitioners Constitutional Rights.

18. Whether Court of Appeals overlooked that the United States Supreme Court characterized 42 U.S.C. 1983 actions as tort actions for purposes of determining an appropriate statute of limitations, the court did not intend that any state statue, apply to "tort actions," would apply to 1983 actions just because they are characterizes as tort action, and therefore failure to file notice as required cannot bar an independent action under 1983. See: Craig v. Witucki,(624 F. Supp. 558 (N.D. Ind. 1986).

19. Whether Court of Appeals overlooked Petitioner entire material evidence of record that asserts over two hundred pages of material evidence that Petitioner filed her complaint on February 13, 2002

PARTIES TO THE PROCEEDING

The Petitioner Debra L. Thomas. The Respondents Evansville Vanderburgh School Corporation, Evansville Vanderburgh Board of Trustees, Pat Loge, Sally Kivett, Jim Trader, Thomas Higgs, and Sharon Turpin.

PETITION FOR WRIT

The Petitioner respectfully petition for a Writ Certiorari to review the judgment of the United States Court of Appeal for the Seventh Circuit

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OPINIONS BELOW

The Court of Appeals unpublished Order. The United States District Court unpublished Order.

JURISDICTION

The Judgment of the Court of Appeals was issued on December 26, 2007, and the Petitioner for Rehearing En Banc was denied on April 02, 2008. This Court has Jurisdiction over this Petitioner under 28 U.S.C. 1254 (1) and Article 111 Section 2.

CONSTITUTIONAL PROVISIONS, STATUES, AND REGULATIONS INVOLVED

The First Amendment to the United States Constitution provides that "Congress shall make no law...abridging the freedom of speech.

The Fifth and Fourteenth Due Process Clause provides heightened protection against government interference with certain fundamental right and liberty interest.

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property without due process of law.

INTRODUCTION

The Petitioner Debra L. Thomas is an adult and is a resident of the Vanderburgh County.

Respondent, Evansville Vanderburgh School Corporation is a public school corporation operating in Vanderburgh County, Indiana.

The Evansville Vanderburgh School Corporation Board of Trustees is the final making and is a govern body of the Evansville Vanderburgh School Corporation.

Respondent Pat Loge is a principal with the Evansville Vanderburgh School Corporation.

Respondent Sally kivett is a Special Concern Counselor with the Evansville Vanderburgh School Corporation.

Respondent Thomas Higgs is a Guidance Counselor with the Evansville Vanderburgh School Corporation.

Respondent Jim Trader is the Director of Student Services.

Respondent Sharon Turpin is a teacher with the Evansville Vanderburgh School Corporation.

STATEMENT OF THE CASE

This case is a 1983 Civil Action against the Respondent while acting under color of law while in their individual capacities for depriving Petitioner of her rights, privileges, and immunities secured by the

Constitution of law. The Respondents' while acting under color of law while in their individual capacities under false pretense assassinated Petitioner's Character by reporting fraudulent child abuse to the Child Protection Services that I had abused by child. The Respondents while acting under color of law while in their individual capacities willful misconduct acts of malice caused Petitioner to suffer emotion mental depression and anxiety that had to be under the care of a mental health doctor. Petitioner became fearful that the Respondents while acting under color of law while in their individual capacities fraudulent child abuse reports would cause Petitioner to lose custody of her four children and or be incarcerated. On March 01, 2000, Respondent Pat Loge while acting under color of state law while in her individual capacity made and reported a under false pretense child abuse report to the Child Protection Services that Petitioner threaten to kill her daughter. Respondent Sally Kivett on March 01, 2000, while acting under color of law while in her individual capacity under false pretense made her complaint from Loge School and reported to the Child Protection Services that mother (Petitioner), threaten to murder Marteisha in front of school staff during yesterday conference meeting. Also, Respondent Sally Kivett, special concern counselor while acting under color of state law while in her individual capacity deprived Petitioner's parental rights for counseling Petitioner's daughter for three years every week without Petitioners knowledge or consent.

Respondent Thomas Higgs while acting under color of state law while in his individual capacity on February 22, 2000, under false pretense fabricated a fraudulent child abuse report that had Petitioner investigated by the Child Protection Services. Also, Respondent Thomas Higgs while acting under color of state law deprived Petitioner of her parental rights by filling out two forms (1) Psychological Testing that asked a question revelant in part, was parent contacted. Respondent Thomas Higgs, left the question blank clearly establishing that the Respondent Thomas Higgs while acting under color of law had never contacted parent about the welfare of her child behavior problems at school. (2) Respondent Thomas Higgs Team Brainstorm Session clearly establishes the Petitioner was deprived of her Fifth and Fourteenth Due process clause Constitution of the United States. Revelent in part the document states to list of general education interventions to help goal. Respondent Thomas Higgs put check marks by meet with counselor, social worker, verbal cues, pref seating, teacher helper, did not put a check were it states parent contact. Respondent Thomas Higgs while acting under color of law has violated Petitioner of her Due Process Clause Constitutional of the United States. Respondent Sharon Turpin while acting under color of state law while in her individual capacity on January 03, 2000, under false pretense made and reported a fraudulent child abuse report to the Child protection Services that Petitioner abused her

daughter. Respondent Jim Trader while acting under color of law while in his individual capacity had knowledge that each Respondents child abuse report (DOSS-509) form was fraudulent that was to be faxed to the Department of Student Services were he is the Director. Respondent Jim Trader had knowledge that each respondent's child abuse report were reported and made under false pretense that had forward the information any way to the Child Protection Services. The Respondent Evansville Vanderburgh School Board of Trustees in their Official Capacity while acting under color of law are liable for the willful misconduct acts of each Respondent malice act toward the Petitioner. The Evansville Board of Trustees is the final policy making adopted to policies of law. Revelant in part, adopted (1) Procedure to following when dealing with child abuse (2) duties and responsibilities of a Special Concern Counselor. The Board of Trustees in their official capacity had knowledge of the Respondents while acting under color of state law child abuse report is fraudulent. The Board of Trustees adopted both policies that had deprived Petitioner of her 1983 Civil Rights. The Evansville Vanderburgh School Board of Trustees, the final policy making governed under law that the Government did not give Respondents while acting under color of law while in their individual capacities the power to assassinate Petitioner's Character by making and reporting fraudulent child abuse to the

Child Protection Services that caused the Evansville Police to come to Petitioner house.

STATEMENT OF MATERIAL FACTS IN DISPUTE

The Respondents while acting under color of law while in their individual capacities deprived Petitioner Debra L. Thomas, pro se, of her 42 U.S.C.A. 1983 Civil Rights that protects her rights, privileges, or immunities secured by the Constitution and law, as well as a right that is protected by the Privileges and immunities and equal Protection Clause. The Evansville School Board of Trustees (the final making authority), Respondent Pat Loge, Sally Kivett, Jim Trader, Thomas Higgs, and Sharon Turpin while acting under color of law while in their individual capacities deprived Petition of her 1983 Civil Rights while acting color of law the Respondents violated Petitioner of her Fifth, and Fourteenth Due Process Clause Constitution of the United States. The Evansville Vanderburgh School Board of Trustees the final making authority is liable for the Respondent while acting under color of law while in their individual capacities had knowledge that the Respondents had fabricated handwritten child abuse (DOSS-509) report that had Petitioner investigated under false pretense by third party the Child Protection Services. The Evansville Vanderburgh School Board of Trustees the final policy making adopted the policy revelant in part, states that a teacher, counselor or school employee who suspects or

knows of an incident of sexual abuse, child abuse or child neglect must report the incident to the building principal immediately. Revelant in part, states that after the oral report has been made a report is to be faxed to the Department of Student Services and counseling. The Department of Student Services and Counseling will then report the incident to the Child Protection Services. The signed copy of the abuse and neglect form should be forwarded to the Director of Student Services and Counseling within twenty four hours. On March 01, 2000, Respondents Pat Loge, and Sally Kivett while acting under color of law while in their individual capacity deprived and violated Petitioner of her Federal Constitutional right of the United States, by fabricating a handwritten under false pretense child abuse form that had Petitioner investigated by the Child Protection Services. The Respondent's child abuse form is clear and convincing that the Respondent had knowledge of the law upon the policy of the Evansville Vanderburgh School Corporation Board of Trustees the final policy making the procedure to follow revelant in part, reporting child abuse. On March 01, 2000, Respondent Sally Kivett while acting under color of law while in her individual capacity deprived and violated Petitioner of her 1983 Civil Rights by their willful misconduct under false pretense fabricated fraudulent child abuse report from Lodge School, and never filled out a D0SS-509 form but still had Petitioner investigated by the Child Protection Services.

SUMMARY JUDGMENT STANDARD

The Federal Rules of Civil Procedure provides that if the evidence show" that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law," an entry of summary judgment is necessary and appropriate. FED.R. Civ. P. 56 the burden of proof with respect to demonstrating the absence of genuine issues of material fact rests squarely with the movant. If the burden is initially met, the non-movant is then obligated to present affirmative evidence demonstrating the existence of issues of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322-24 (1986). Moreover, a court favor the non-movant. Anderson v. Liberty, Inc. 477 U.S. 242, 256 1986) The Court of Appeals for the Seventh Circuit has noted. "The non-moving party's own affidavit or deposition will constitute affirmative evidence to defeat a summary judgment motion, even if it includes only bare denial ,"Sarsha v. Sears, Roebuck & Co., 3F.3d 1035, 104 (7th Cir. 1993) Moreover, a court favors the non-movant. non-movant's obligations with respect to demonstrating the existence of genuine issues of fact in defeating a motion for summary judgment are not overly onerous. Indeed a summary judgment is warranted only when the proffered evidence could not permit reasonable jury to conclude that the Plaintiff suffered discriminatory treatment. Salinas v. Dent Wizard International, 2000 U.S. Dis. Lexis 5476 (ND.Ill. 2000)(citing Fuka v. Thomson Consumer

Elecs., 82 F 3d 1397, 1402 (7th Cir. 1996). The Petitioner only needed to only show the existence of genuine issues of material fact in order to demonstrate the shortcoming of the defendants' Motion. Consequently, the Petitioner need not prove ultimate success on the merits at this stage in the litigation, only the existence of genuine issues of material fact precluding judgment. Also, Petitioner had submitted eighteen pages of genuine issue of material fact that met the requirement to defeat a summary judgment under Rule 56 (e).

ARGUMENT

A. PETITIONER HAS ALLEGED VIABLE 42 U.S.C. 1983 CLAIM

The Respondents while acting under color of law while in their individual capacities deprived Petitioner of her Fifth and Fourteenth Due Process Clause Amendment Constitution of the United States had reported with knowledge over ten child abuse reports against Petitioner that had Petitioner investigated by third party the Child Protection Services. By Law, had to investigate the report by the school whether it's frivolous or not. The malice acts of the Respondents while acting under color of law while in their individual capacities had assassinated Petitioner character, that has deprived Petitioner of her right to own and operate her own business called "Home Away from Home to rescue under privilege children. The

Respondents while acting under color of law have damaged Petitioner's reputation that Petitioner will never be able to get her license to operate her own business with working with children. The Respondents willful acts of assassinating Petition Character is a injury sustained under 1983. Also, Respondents while acting under color of law violated Petitioner Fifth and Fourteenth Due Process Rights for depriving Petitioner of her parental rights by licensed Respondent Sally Kivett who is a Special Concern Counselor hired by the Evansville Board of Trustees the final policy making that adopted a law for the Duties and Responsibilities for the Special Concern Counselor to follow. Revelant in part, contact parent. Respondent Sally Kivett while acting under color of law, while in her individual capacity was secretly counseling my daughter without my knowledge or consent for three years every week. "The Fifth Amendment Due Process Clause provides heightened protection against government interference with certain fundamental rights and liberty interest. The Supreme Court held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring children" and "to control the education of their own. The Fourteenth Amendment to the United States Constitution provides that "... no state shall "deprive any person of life, liberty, or property without due process law." The United States Supreme Court has long recognized that the Amendment's Due Process Clause, like its Fifth

Amendment counterpart, "guarantees more that fair process." Troxel V. Granville, 530

U.S. 57, 65 (2000)(citing Washington, 521 U.S. at 720; see also Reno v. Flores, 507 U.S. 291, 301-302 (1993). More recently the Supreme Court has recognized the fundamental right of parents to Make their decisions concerning the care, custody, and control of their children. Stanley v. Illinois , 405 U.S. 645, 651 (1972). As the Supreme Court stated in Troxel v. Granvill, 530 U.S. 57, 65-67 (2000), "(i)n light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children. Thus, Petitioner has adequate standing to bring this cause of action against the Respondents in regards to the manner that the Evansville Vanderburgh School Board of Trustees the final policy making adopted a policy called Special Concerns Counselor Duties and Responsibilities. Respondent Sally Kivett Special Concern Counselor while acting under color of law while in her individual capacity deprived Petitioner of her Due Process Clause of the Fifth and Fourteenth Amendment that protects the fundamental right of parents to make decisions concerning the care, custody, and control of her child. Respondent Sally Kivett while acting under color of law while in her individual capacity had deprived Petitioner of her parental Due Process Clause. Petitioner on February 29, 2000, learn that the

Respondent had been taking Petitioner's child out of class for counseling for three years without Petitioner's knowledge or consent. The Evansville Board of Trustees allowed Respondent Sally Kivett to step outside her boundary. The Evansville Vanderburgh School Corporation/Board of Trustees only had the power to exercise local govern rules of a Special Concern Counselor. The Board of Trustees policy for Special Concern Counselors Duties and Responsibilities revelant in part, states that Counselor is to maintain a record of counseling contacts with assigned icounselees, to maintain a record of home and/parental contacts, to maintain a file of all cases involving absence and truancy, to maintain confidentiality about students and families, to make parental contacts when the school is unable to do so, and to perform other duties assigned or approved by the Director of Student Services and Counseling. Under 42 U.S.C. 1983 local government, municipal corporation, and school boards are "person; subject to liability under 42 USCS 1983 for violating another person's federally rights, and thus are not wholly immune from suit under 1983· statute covering legal as well as natural person; as persons, local governing bodies can be sued directly under 198 for monetary, declaratory, or injunctive relief where the action that is alleged to be unconstitutional implements or executes policy statement, ordinance, regulations, or decision officially adopted and promulgated by that bodies officers; local government officials sued in their official

capacities are "persons under 42 U.S.C. 1983- which imposes civil liability on any person who deprives another of his federally protected rights-in those cases in which local government would suable in its own name. Montell v. Department of Social Servs. (1978) 436 US 658, 56 L Ed 2d 611, 98 S Ct 2018, 17 BNA FEP Cas 873, 16 CCH EPD 8345. Action for money damages under 42 USCS 1983 would lie against individual members of school board, Endicott v. Van Petten (1971, DC Kan) 330 F Supp 878. Also, Respondent Sally Kivett while acting under color of law violated Petitioner 42 U.S.C. 1985 Rights. Respondent Sally Kivett while acting under color of law while in her individual capacity conspired with Respondent Pat Loge with her report of fraudulent statement to third party the Child Protection Services. Respondents Pat Loge and Sally Kivett while acting under color of law while in their individual capacities conspired to assassinate Petitioner Character, by making and reporting under false pretense child abuse report and statements that don't add up. On March 01, 2000, Respondent Pat Loge, filled out a handwritten Evansville Vanderburgh School Corporation DOSS 509 form and faxed it to the Department of Student Services then reported to the Child Protection Services. Respondent Pat Loge states revelant in part, that mother called school at 7:50a.m. that threaten to kill her daughter that I don't want her any more, I don't like her. Respondent Sally Kivett while acting under color of law while in her

individual capacity, reported and made a fabricated under false pretense child abuse report against Petitioner. Respondent Sally Kivett while acting under color of law reported and made her complaint from Lodge School on March 01, 2000 at 8:40 a.m. Respondent Sally Kivett while acting color of law revelant in part, document from the Indiana Family and Social Services Administration Division of Family and Children Preliminary Report of Alleged Child Abuse an Neglect. State Form 114(R5/11-98) FPP0310, Allegation Narrative: Sally Kivett, Special Concern Counselor, called regarding concerns of this family. Yesterday there was a conference with school staff and mother, Debra Thomas, Debra threaten to murder Marteisha and stated she can pack her bags and leave. She do not want her home. As stated before, the Evansville Vanderburgh School Board of Trustees the final policy making adopted a policy of law Procedure to follow revelant in the case child abuse report. The Board of Trustees in their Official Capacity had knowledge that the Respondents willful misconduct acts of malice deprives ad violate Petitioners Federal Constitutional Right. The Respondent Sally Kivett while acting under color of law never filled out a Evansville Vanderburgh School Corporation D0SS-509 form to be faxed to the Department of Student Services. Respondent Pat Loge and Sally Kivett while acting under color of law while in their individual capacities made their fraudulent report on March 01, 2000, revelant in part,

that Petitioner called school and stated I threaten to kill my daughter. Respondent Sally Kivett while acting under color of law while in her individual capacity conspired with Respondent Pat Loge made her fraudulent under false pretense report against petitioner stated revelant in part, that I threaten to murder my daughter in front of school staff during a conference meeting. The Respondents while acting under color of law while in their individual capacities deprived Petitioner of her Federal Constitutional Right by assassinating Petitioner Character by making malice under false pretense fabricated child abuse report and made statements to third party the Child Protection Services that had Petitioner investigated under false pretense that clearly violates the Petitioner's Federal Constitutional rights. (The Board of Trustees revelant in part, states a teacher, counselor or school employee who suspects or knows of an incident of sexual abuse, child abuse or child neglect must report the incident to the building principal immediately. After the Oral Report has been made, Please fax your report to the Department of Student services. A signed copy of the School Abuse and neglect form DOSS-509 should be forwarded to the Director of Student Services and Counseling within twenty four hours.

B. DEFENDANTS' CONDUCT WAS A CLEAR VIOLATON OF PETITIONER'S CONSTITUTIONAL RIGHTS

The Evansville Vanderburgh School Corporation/ Board of Education wanting to exercise the power must do so in that manner as a minimum requirement. The Respondents' failed to comply with the law of the State Legislature. The State never gave the EVSC/Board of Education the power of the Guidance Counselor to have Qualified Immunity. The power of a Special Concern Counselor is the power that the Evansville Vanderburgh School Corporation/Evansville Board of Education Duties and Responsibility of a Special Concern Counselor. Alexander Roman, et al., v. Marjorie APPLEBY , et al civ. A. No. 78-3153 United States District Court, E.D. Pennsylvania. Feb. 22, 1983.

C RESPONDENTS MISCONDUCT ACTS WHILE ACTING UNDER COLOR OF LAW OF CAUSED PETITIONER TO SUFFER PERSONAL INJURY

The Respondents while acting under color of law while in their individual capacities cause Petitioner to sustain injuries do their under false pretense fabricated child abuse report to the Child Protection Services. Petitioner became fearful that she could lose custody of her children due to the malice acts the Respondent, The Petitioner suffer emotional mental stress, depression/anxiety.

REASON TO GRANT WRIT CERTIORARI

The Petitioner's supplemental eighteen pages of genuine issue of material fact that had adduce

sufficient evidence for which a jury could conclude that the Respondents indeed deprived Petitioner of her Federal Constitutional Right while acting under color of law while in their individual capacities.

The Court of Appeals of the Seventh Circuit opinion in case Dredge Corp. v Penny 338 F 2d 456, (ALR Fed 281),reversed and remanded, because the District Court could not, by rule or otherwise, preclude a party from requesting oral argument, nor deny such a request when made by party opposing for summary judgment, unless such motion was denied, an the District Court in the case at bar committed reversible error in given effect at bar committed reversible error in given effect to it's rule to preclude oral argument.

Also, See Fernhoff v Tahoe Regional Planning Agency (1986, CA9 Nev) 803 F2d 979. Federal Rules of Civil Procedure 56, n 23 Local rules revelant in part that District Courts are authorized to provide by rules that party desiring oral argument on motion for summary judgment under Rule 56 must apply therefor, in absence of which oral argument will be deemed waived: however, District Court may not by rule or otherwise preclude party from requesting oral argument nor deny such request when made by party opposing motion unless motion is denied.

The District Court error deprived the Petitioner of her Federal Right for trial by jury, under Rule 56 (e) Petitioner provided evidence the court genuine issues

of material fact under Rule 56 (e),that was filed stamped by the Clerk on August 16, 2004.

District Court erred under Rule 12, for denying Petitioner of her Federal Right to present all of her material evidence that asserted material evidence to support Petitioners 1983 Civil Rights complaint action brought pursuant 42 U.S.C. 1983.

Quoting U.S. Supreme Courts Reports (Lawyer Edition) 5 L Ed. 2 Civil Rights 12,5-liability-misuse of power-State Law. 10. Misuse of power, possed by virtue of state law and made possible only because the wrong doers is clothed with the authority of state law, is action taken "under color" of state law, within the meaning of Rev Stat 11 1979 (42 USC 1983), which gives a right of action against a person, who, under color of state law, subjects another to the deprivation of any rights, privileges, or immunities secured by the Federal Constitution.

The Respondents were cloth with authority of state law when they deprived Petitioner of her 1983 Civil Rights, under false pretense fabricated over ten handwritten child abuse report that had Petitioner investigated by third party the Child Protection Service.

The Petitioner has a Federal Constitutional Right to seek relief against the Respondents' while acting under color of law while in their individual capacities with knowledge that their fabricated child abuse report was

fraudulent that deprived Petitioner of her 1983 Civil Rights.

During twenty-two month period from March 2000 through December 2001, Petitioner accumulated 1,812.25 non-paid hours, loss of wages over $28,000.00, Petitioner suffered financially and was forced to file Bankruptcy.

The Government did not give the Respondents' while acting under color of law while in their individual capacities authority to deprive Petitioner of her 1983 Civil Rights and violate Petitioner's Fourteenth Amendment and Petitioner's Fifth and Fourteenth Due Process Clause Constitution of the United States.

Because of District Court manifest error under Rule 59 (e), evidence of record that Petitioner had rendered eighteen pages of genuine issues of material evidence that could have established that genuine issues of material fact exists that was not ruled on by the District Court.

The Respondents while acting under color state law while in their individual capacities fabricated under false pretense Child Abuse Report to the third party the Child Protection Services, has

Deprived Petitioner of her Federal Right of having her own business to operate a business that would give under privilege children a home away from home.

The Respondents while acting under color of law while in their individual capacity as assassinated Petitioner character given the Petitioner the right to sue under 42 U.S.C. 1983 Civil Right.

See Begnaud v. White (1948, CA7 Tenn)170 F2d 323 states revelant in part, Fed. R. Civ. P. Rule 56, that Trial Judge should go slow in passing upon motion for summary judgment where there is reasonable indication that material fact is in dispute. District Court erred for not reviewing entire record that Petitioner had indeed provided the Court with eighteen pages of genuine issue of material fact of evidence that met the requirement under Rule 56 (e).

See Brokaw v. Mercer County 235 F 3d 1000, 1022-1023 (7th Cir. 2000), Id. Citing Rakovich v. Wade, 850 F. 2d 1180, 1209, (7th Cir. 1988). Id Citing Burgess v. Lowery, 201, F. 3d 942, 945, (7th Cir. 2000), See e.g; K.H. Through Murphy v. Morgan, 914, F 2d 846, 851 (7th Cir. 1990).

See: Cf. Morris v. Dearborne, 181 F 3d 657, 668 (5th Cir. 1999). (It is beyond purview that any rational teach could believe that governmental destruction of a family base on fabricated evidence is constitutionally allowed."); Id. At 672 (making knowingly false statements of child neglect violates clearly established constitutional right to familial relations).

See: Roman, et al, v. Appleby, et al., 558 F. Supp. 449 (E.D. Penn., 1983), a similar situation arose in which

parents claimed a violation of the right "to maintain a private family relationship without unnecessary, unreasonable, and capricious governmental

interference and control." Id at 454. The difference in this matter is Respondent Sally Kivett while acting under color of law while in her individual capacity does not have the right of State Law of the Legislature.

Respondent Sally Kivett is a licensed Social Worker not a guidance counselor. Respondent Sally Kivett was hired by the Evansville Vanderburgh School Corporation Board of Trustees, the final policy making adopted a law of Responsibilities and Duties to follow, the Respondents while acting under color of law beyond her boundaries befriended Petitioner's daughter with secret counseling session for three years every week without Petitioner knowledge or consent. Which violate Petitioner of her Fifth and Fourteenth Due Process Clause.

The Evansville Board of Trustees in their Official Capacity the final policy making are liable for the Respondents willful misconduct acts that deprived Petitioner of her Federal Constitutional Rights while acting under color of law while in their individual capacities.

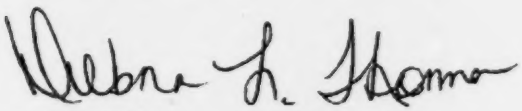
The Court of Appeals erred in his order on December 26, 2007. Sally Kivett on March 01, 2000, indeed made a complaint to CPS that revelant in part, mother threaten to murder Marteisha in front of school staff

during the conference. See Petitioner (Appendix to the 7th Cir).

CONCLUSION

For the foregoing reasons, Debra L. Thomas respectfully request this Supreme Court grant Petition Writ Certiorari review of this matter.

Respectfully Submitted,



DEBRA L. THOMAS

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APPENDIX (A)

DISTRICT COURT ORDER ON NOVEMBER 04, 2004

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

EVANSVILLE DIVISION

DEBRA L. THOMAS, EV02-24-C M/H

Plaintiff

Vs.

EVANSVILLE VANDERBURGH SCHOOL CORPORATION, et al.,

Defendants,

ORDER

This matter is before the Court on various motions relating to Defendant' motion for summary judgment. The Court has granted Defendants' motion for summary judgment; these ancillary motions are resolved as follows: The Court DENIES Defendants' motion to strike. It is unnecessary for the Court to

strike much of the material referred to in Defendants' motion. Rule 56 (e) of the Federal Rules of Civil Procedure require the plaintiff, Debra L. Thomas ("Thomas"), produce evidence to support her claims, and that such evidence "shall produce evidence to support her claims, and that such evidence "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." The Court has not considered any evidence Thomas submitted that did not meet the requirement of Rule 56 (e), as is evident from the text of the Court's order granting summary judgment. Also evident from the Courts' order is that the Court need not consider much of the evidence Defendants' move to strike, because the Court did not resolve Thomas' state court claims on the merits. Further, the Court will not strike the affidavit of Marteisha Mosley. In her May 1, 2004, affidavit Marteisha state that she did not report abuse to the people and on the dates indicated in each of the EVSC child abuse and Neglect Forms, which Defendants submitted in support of their summary judgment. Affidavit of Marteisha Mosley 4-5, 7-12. Defendants ask the Court to conclude that Thomas drafted Marteisha's affidavit and that Marteisha had no choice but to sign the affidavit. Mot. To Strike at 3. The Court has no evidence upon which to make such a conclusion. This Court cannot, on a motion for summary judgment, make credibility determinations.

See Payne v. Pauley, 337 F. 3d 767, 770, (7th Cir. 2003). Even assuming Thomas drafted Marteisha's affidavit, the Court cannot presume the statements are unreasonable. A "self serving" affidavit can demonstrate dispute issues of material fact, and although the Court need not vouch for the truth of Marteisha's statements, it must accept Thomas' version of the facts for the purposes of summary judgment. See id. At 773. Defendants' motion to strike the affidavit is denied. The Court DENIES Thomas' request for oral argument. The Court STRIKES as MOOT defendant' request or an order regarding 'Thomas supplemental material. The Court granted Thomas permission to supplement, pro se, her opposition to Defendants; motion for summary judgment, and the Court considered that 10-page supplement in its decision. The Court has no record of Thomas filing an additional 18-page supplement.

IT IS HEREBY ORDERED this 4 day of November, 2004

LARRY J. MCKINNEY, CHIEF JUDGE

United States District Court

Southern District of Indiana

APPENDIX (B)

DISTRICT COURT FINAL ORDER ON APRIL 19, 2007

Entry Concerning Selected Matters

This Court, having considered the above-action and the matters which are pending, makes the following rulings.

1. The defendants' motion to dismiss their counterclaim is granted.

2. The plaintiff's motion to re-open the action is denied as unnecessary because the action was re-opened on February 26, 2007, as this court had directed.

3. The plaintiff's remaining motions filed on March 13, 2007, are denied as moot, because they are directed to the counterclaim, which has now been dismissed.

4. The rulings in this Entry, together with the prior rulings in this case, resolve all claims against all parties, Final judgment consistence with these rulings shall now issue.

IT IS SO OREDERED.

LARRY

MCKINNEY

Date April 19, 2007 CHIEF JUDGE

APPENDIX (C)

UNITED STATES COURT OF APPEALS COURT OF APPEALS (7th Cir.) ORDER ON DECEMBER 26, 2007

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

Submitted December 19, 2007

Decided December 26, 2007

Before

Hon. KENNETH F. RIPPLE, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

Hon. DIANE P. WOOD, Circuit Judge

DEBRA L. THOMAS,
Plaintiff-Apellant,

v.

EVANSVILE VANDERBURGH SCHOOL CORP., et al.,
Defendants-Appellees

Appeal from the United States District Court
Evansville, Indiana
No. 02 C 24
Larry J. McKinney
Chief Judge.

No. 07-2083

ORDER

This appeal concern the measures taken by a public elementary school's teachers, counselor's principal, and nurse in response to a student's claims that her mother was abusing her. The mother, Debra Thomas, seeks relief under 42 U.C.S 1983. Contending that school officials-deprived her of her constitutional rights to equal protection under the law by falsely reporting that she had abused her daughter. Marteisha Mosley. Thomas further contends that, in meeting regularly with Mareisha without Thomas's Knowledge, a school counselor deprived Thomas. After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. The appeal is submitted on the briefs and the record. See FED. R. APP. 34 (a) (2).Of her substantive due process rights to direct the

upbringing of her child. And she argues that school officials have since retaliated against her for complaining about their handling of Marteisha's situation by rejecting her request to enroll her children at the school. The district court granted summary judgment for the school and its official, and Thomas appeals. We affirm.

We recite the facts in the light most favorable to Thomas. Between January 1998 and March 2000, Marteisha was enrolled at Lodge Elementary School in Evansville, Indiana. During that period, members of the school staff-teacher Debra Kascavage, nurse Marilyn Wright, principal Pat Loge, and guidance counselor Thomas Higgs-reported to Child Protective Services (CPS) ten incidents of Thomas's suspected abuse of Marteisha. Eight of the reports related that with an electrical cord, or whipped her with a switch. CPS confirmed that two of those reports were substantiated__ the reports on March 25 and December 8, 1998, both of which included observations of bruised and welts on Marteisha's body. The CPS deemed unsubstantiated the other six reports of physical abuse. Principal Loge filed the two remaining reports__ one in 1998 and the other in 2000. In the first, she reported that Marteisha rode a city bus alone to her babysitter; in he second, she reported that Thomas had called school and threatened to kill her daughter. Those reports also were deemed unsubstantiated. But the CPS, which has a procedure for investigating whether a report is false, did not

initiate that procedure will respect to any of the unsubstantiated reports. At no point did anyone remove Marteisha from Thomas's custody, though the CPS did send police officers to her home in response to Loge's report that Thomas had threatened to kill Marteisha'. During this period, teachers, school (administrators and other personnel frequently would call upon Sally Kivett, a special concerns counselor at school, to take Marteisha out of class and discuss her difficulties functioning and performing at school. It is undisputed that Kivett did not inform Thomas of her conversations with Marteisha until February 29, 2000. On that day Kivett met with Thomas. Marteisha's father, principal Loge, and guidance counselor Higgs, to discuss Marteisha's academic and behavior issues. During the conference, Kivett related to Thomas, who is African American, that Marteisha had told her that Thomas had called Mareisha a "bitch" and threatened. "Do bad, and I'll hit you like a nigger in the street." Thomas denies that ever said words to Marteisha. Following the conference, on March 1, 2000, Kivett called CPS to discuss her concerns about Thomas's treatment of Marteisha. She did not, however, report that had committed child abuse or neglect. Two years later, Thomas initiated this lawsuit against the school and its officials. (She also unsuccessfully sued CPS official in a separate lawsuit. Thomas v. Starks, 159 Fed. App'x 716 (7th Cir. 2005) (unpublished order). In addition to her claims that school officials had falsely reported child abuse and interfered with her parental

right by privately meeting with her daughter. Thomas alleged in her third amended complaint that the school had not allowed her to enroll her younger children at Lodge in retaliation for her public complaints about the school. After nearly three years of litigation, the district court granted the school's motion for summary judgment. Thomas, who was presented by appointed attorneys in the district court, proceeds pro se on appeal. She contends that the district court should have allowed her to proceed to trial on her equal protection claims, her due process claim, and her First Amendment Retaliation claim. She also asserts that the court committed various procedural errors. We address each of her contentions in turn. Thomas first argues that the district court erred in concluding that no reasonable jury could find that school officials discriminated her on the basis of her race, violation of her right to equal protection under law. To survive judgment. Thomas had to adduce sufficient evidence from which could conclude that the school officials' actions had a discriminatory effect and were motivated by discriminatory purpose. Wee Chavaz v. III. State Police, 251 F.3d 612, 635-36 (7th Cir. 2001). Thomas had to come forward with some evidence that she was treated differently than similarly situated parents who were not African-American, and the school officials filed the reports at least in part because of her race. See id. At 636, 645. She did neither. Thomas did not identify a single similarly situated parent nor has she identified any credible evidence to rebut the official's

affidavit testimony that they had made the reports in good faith, Indeed, Thomas has not come forward with any evidence that school officials were motivated by her race. The only evidence that could possible hint that Thomas's race was considered is that Kivett used the word "nigger"in repeating Thomas's alleged threat to hurt Marteisha. Although we have said that the of racial slurs can be strong evidence of racial animus, DeWalt v. Carter, 224 F 3d 607, 612 n.3(7th Cir. 2000), Kivett was reporting verbatim what Marteisha had told her. That indirect use of the slur, standing alone, is simply not enough evidence to support an inference of discriminatory intent. And, in any event, Kivett never filed a report with CPS. Thomas relies entirely on her own experiences—which, as we explained, she has not shown were discriminatory. And although she avers that she has personal knowledge of African-American parents experiencing similar treatment by school officials, she does not identify those persons, nor has she identified any example of discriminatory treatment. Thomas next argues that the district court erred in concluding that school officials were entitled to qualified immunity on Thomas's claims that counselor Kivet's private discussions with Marteisha violated Thomas's substantive due process right to direct the upbringing of her daughter. School officials were entitled to qualified immunity if the facts viewed in the light most favorable to Thomas, show that Kivett's conduct did not violate a constitutional right. See Scott v. Harris, 127 S. Ct 1769, 1774 (2007). If they

did show a violation, we would next ask whether the right was clearly established ate the time. Id. We need not proceed to the second step because Thomas has not shown that counselor's private discussions with Marteisha violated Thomas's Constitutional rights. We agree Thomas has a fundamental right, secured by the due process clause, to direct the upbringing and education of her child. See, e.g., Troxel v. Granville, 530 U.S. 67, 65-66)2000)(collecting cases). That right was articulated in Pierce v. Soc'y of Sisters, 268 U.S. 510 (1925). Where the Supreme Court declared unconstitutional an Oregon law requiring partents to send their children to public schools, and in Meyer v. Nebrasha, 262 U.S. 390 (1923, where the Court held that a law restricting the instruction of foreign languages to children violated parents' right to employ a teacher to instruct their child, See id. at 400. But a right to choose the type of school one's child attends, or to direct the private instruction of one's child, does not imply a parent's rights to control every aspects of her. Child's education at a public school. See Fields v. Palmdale Sch. Dist., 427 F .2d 1197, 1204-07 (9th Cir. 2005); Leebaert v. Harrington, 332 F .3d 134, 140-42 (2d Cir. 2003); Brown v. Hot, Sexy & Safer Prods., Inc. 68 F .3d 525m 533-34 (1st Cir. 1995); cf. Wisconsin v. Yoder, 406 U.S. 205, 232-33 (1972) (limiting state's power over education when it implicates parent's rights under the Free Exercise Clause). Divett's affidavit testimony shows that her discussions with Marteisha were

academic in nature, focusing only on her problems performing and functioning at school. And Marteisha's vague description of the conversations as "personal" in her affidavit, signed at age 16 signed at age 16, does not rebut that testimony. Because Thomas pointed the court to no authority to support her claimed right to know about these academically oriented conversations when they occurred, the district court correctly concluded that the school officials were entitled to qualified immunity. Thomas also argues that the school officials denied her other children enrollment at Lodge—they were plaice in a different elementary school—in retaliation for Thomas's exercise of her First Amendment rights. Bus she had adduced no evidence to support the contention. James Trader, the Director of Student Services and Counseling at the Evansville-Vanderburgh School Corporation, avers that the decision was made to avoid confrontation between school staff and Thomas. Trader believed such a step was necessary because he learned that Thomas had said that she wished Trader would "have a heart attack and die" and that she wished principal Loge's breast cancer had killed her. Without evidence that even hints that the decision was made for constitutionally impermissible reasons, the district court properly dismissed the claim.

We next turn to Thomas's disagreements with the district court's handling various procedural matters. Her primary assertion, which she reiterates extensively, in her reply brief, is that the district court'

sua Sponte granted summary judgment without offering her an opportunity to cure the defect in her complaint. But the court did not sua sponte grant summary judgment the school mover for summary judgment after extensive discovery on both sides, and the court considered Thomas's responses to the motion before granting it. Thomas also, argues that the court should have granted oral argument on the summary judgment motion, but she has not shown that the district court abused its discretion to denying it. See S.D. IND. R. 7.5 (a). Thomas's other procedural arguments—failing to set trial date pending the outcome of the summary judgment motion, allowing extra pages in the school officials' submissions, and failing to hold a status conference after granting summary judgment—are all meritless. Finally Thomas appears to have abandoned her state law claims on appeal. In any even, she has not shown that the district court abused its discretion declining to exercise supplemental jurisdiction over the state law claims after dismissing the federal claims. See 28 U.S.C. 1367 (c)(3); Williams Elecs. Games, Inc. v. Garrity, 479 F .3d 904 (7th Cir. 2007)

AFFIRMED

APPENDIX (D)

COURT OF APPEAL OF THE 7th CIRCUIT ORDER ON PETITIONER HEARING EN BANC ON APRIL 02, 2008

Before

Hon. Kenneth F. Ripple, Chief Judge

Hon. Daniel A Manion Circuit Judge

Hon. Diane P. Wood, Circuit Judge

No. 07-2083 Appeal from the United States

District Court for the Southern District

Of Indiana, Evansville Division

Debra L. Thomas

v. Plaintiff-Appellant No. 02 C-M-24

Evansville-Vanderburgh School Corp. Larry J. McKinney, Chief Judge

Et al.,

Defendant-Appellees

ORDER

On consideration of the petition for rehearing en banc filed by petitioner-appellant, no judge in active service has requested a vote on the petition for rehearing en banc, and all judges on the original panel have voted to deny rehearing. The petition is therefore

DENIED